

2014 State of the Judiciary Address

**To a Joint Session of the Indiana General Assembly
Brent E. Dickson, Chief Justice
January 15, 2014**

Gov. Pence, Lt. Governor Ellspermann, Members of the General Assembly, and Guests:

This is the occasion to fulfill the Indiana Constitution's directive that the Chief Justice report to you on "the condition of the courts." In short, Indiana's judges are very, very busy; we are extremely challenged but quite gratified every day; we could do even better with more resources; we are extremely honored for the privilege of judicial service; and we are fortunate to have an outstanding working relationship with the General Assembly and the Executive Branch as we partner together on various fronts.

This report is going to contain a lot of details, but before we do, let me share one of the highlights of this past year from a speech given by Justice Massa. He told a story that gives a captivating insight into the crucial importance of courts for a productive society. Here is essentially what he said:

A Los Angeles Laker who was cut by his NBA club, signed a one-year contract to play in Greece. His deal called for \$100,000 and a rented apartment. But early that season, the team started paying only half his salary. When he consulted his agent, he was told Greek law did not come down on the side of the laborer until an employer was at least three months in arrears. A few months later, his landlord tried to evict him because the team had not paid his rent in four months. Not to worry, the team told him, since landlords there are powerless to evict until someone is at least six months behind on their rent! By the end of the year, the basketball player was still in his apartment, but the team still owed him half his salary. He sued; he actually won. The team appealed, but the player won the appeal. And then he waited. And waited. A year after he left Greece without his money, the Greek basketball league was facing collapse, so the Minister of Sport forgave the debts of the teams.

This basketball ballplayer noted that many of the Greeks he met in the sports world and beyond already believed that their system was so broken that individual effort did not matter. Think about that: the system was so broken that individual effort did not matter! People did not pay their taxes in full or work a complete day, and when they were confronted with the Greek economy, they just threw up their hands. The player concluded that real change won't arrive until anyone who signs up to work in Greece—stockbroker, IMF administrator, or basketball player—knows that he can count on Greek law for protection.

"Thankfully," Justice Massa said, "we still provide that protection here." And he emphasized that when many people think of the justice system, they think first of the criminal justice system and the delicate balance it maintains between liberty and security. But in reality, Indiana's judiciary is very important to commerce and the daily pursuits of most of our citizens. You simply cannot have a functioning free market economy without a fair and open forum with rules and predictable outcomes where private contracts are enforced and disputes settled. Thank you, Justice Massa, for bringing us this spectacular modern-day example of the crucial role of the judicial branch and the importance of the support we receive from you, the men and women of the Indiana General Assembly.

Last year, Indiana's 318 trial courts received over 1.6 million new case filings (up a fraction of a percent over last year) and conducted 1,338 civil and criminal jury trials. This was accomplished by 547 judicial officers (judges, magistrates, commissioners, and referees). Some of them are here today. Would all Indiana trial judges please stand and allow us to thank you for your service?

With the beginning of 2014, the Court of Appeals has experienced a change in leadership. Completing her term as Chief Judge is Margret Robb (the first female Court of Appeals Chief Judge in Indiana history). She has served her three-year term with distinction, dedication, innovation, and energy. Judge Robb, please stand and let us thank you for your outstanding service. Her successor is Chief Judge Nancy Vaidik, who will also be a great Chief Judge, as we know from her past work. Judge Vaidik, please stand so that we can welcome you to your new position.

During the past year, over 2,000 appeals were presented to the Court of Appeals (one of the highest volume and most efficient appellate courts in the country). The Indiana Tax Court received 76 new cases. And review was sought in the Supreme Court in just over 1,000 cases. Compared to last year, this represents over a 1% increase in new cases for the Court of Appeals*, just over an 8% decrease for the Tax Court, and almost a 3% increase for the Supreme Court.

Among the Supreme Court's other constitutional responsibilities, our State Board of Bar Examiners administered two bar exams to a total of 866 applicants, of which 631 passed and were admitted to the bar. On the lawyer discipline side, working with our attorney Disciplinary Commission, the court imposed various sanctions to protect the public. This included one disbarment and fourteen lawyer resignations after initiation of a disciplinary investigation.

All the work of Indiana's whole judicial branch is done at an amazing value to Hoosiers. The judiciary, the third branch of Indiana government, operates on only 9/10 of 1% of the total spending by all Hoosier government units—state, county, local, city, town, and township. Just think about it: for every ten dollars spent by all Indiana's government units last year, only nine cents went to the judiciary! And this does not even take into consideration the fact that the Indiana judicial system itself generates over 205 million dollars in annual revenue, which is directed to various state and local purposes. This is equivalent to 55% of the total expenditures for all of Indiana's judiciary.

The bottom line is that our judicial system provides enormous value to Hoosier citizens—and does so at a miniscule cost to taxpayers. What a bargain!

But your Indiana judiciary is more than data and dollars. It is a team of judicial officials dedicated to serving Indiana and its citizens. While our primary responsibility is to decide cases, Indiana judges and justices, and their staffs, have been going beyond the call, reaching out, touching, and improving lives with a myriad of innovative programs. Here are a few:

We have expanded the use of Problem Solving Courts, which have proven to be very effective in helping change the lives of people in trouble. Such courts include drug courts, domestic violence courts, mental health restoration courts, community courts, offender post-incarceration reentry courts, and veterans' courts. There already are 54 certified Problem Solving Courts and 10 more are on the way.

Another initiative made possible by your funding in last year's budget is the Adult Guardianship Program. As a result, seniors and incapacitated adults in 15 major counties are now being served by trained volunteer advocates.

We are also proud of our expanding CASA program (Court-Appointed Special Advocates) for abused and neglected children. Programs this past year were started in 5 more counties, bringing the total to 63 certified programs in 78 counties (where we distributed 2.9 million dollars in matching grants). CASA is made possible by 3,500 Indiana volunteers advocating for 16,000 children.

Last year's legislative session also elected to invest substantial funds in probation, including officer training, implementation of effective practices, and forensic diversion, which covers a variety of rehabilitative programs and pilot projects that focus on reducing repeat offenses, that is, "recidivism." We appreciate the General Assembly's partnership in these efforts.

Now in its third year, the Courts Mortgage Foreclosure Trial Court Assistance Program has moderated over 22,000 conferences between borrowers and lenders, resulting in over 5,000 mortgage foreclosure cases where an agreement has enabled the borrower to stay in their home and averted approximately 200 million dollars in foreclosure losses for homeowners. We continue to be grateful to the Lieutenant Governor's Housing and Community Development Authority, whose funding has made this possible.

During the past year, we merged several of the Supreme Court's staff members into a new team, our Office of Communication, Education, and Outreach, to provide even better media communication, to further transparency, to enhance public trust and confidence, to advance civics education for classroom teachers, and to facilitate greater in-person judicial outreach to students. As one example, this past year, on Constitution Day, 44 judges (including several justices) visited 119 classrooms to talk with over 3,000 students. Another facet of this new team's efforts—our website—has again won distinction. Thanks to the technical competence and creativity of our webmaster Lindsey Borschel, our website was named one of 2013's Top Ten Court Websites by the Forum on the Advancement of Court Technology.

Justice Robert Rucker is the Supreme Court's voice in Indiana's effort to confront the challenges posed by people with Limited English Proficiency in the Courts. This is an area strongly penetrated by federal regulatory oversight. At the present time, the National Conference of State Court Administrators is working with the Department of Justice to create a satisfactory planning

tool for individual states to use. This is a delicate prerequisite to any further substantial state programming efforts because failure to strictly comply with Department of Justice expectations could put at risk several other state programs that rely on federal funds. Justice Rucker is on top of this, and we will advance as soon as we can. In the meantime, more and more language translators are being certified.

Thanks to your generous funding and the cooperation of our partners, the Department of Correction, the Criminal Justice Institute, and the Department of Child Services, the important Juvenile Detention Alternatives Initiative (JDAI) is now undergoing a huge expansion. Due in large part to the efforts of Justice Steven David, JDAI is now operational in the 19 counties with 56% of Indiana's court-involved youth. We are seeing a 44% reduction in juvenile admissions to secure detention, 40% reduction in average daily population in secure detention, and 18% drop in youths committed to the Department of Corrections, and all with no increase in re-offense rates.

Just as last year, the top priority of your Indiana judicial branch is assuring that all our trial courts are equipped with effective electronic case management and data sharing technology. The 2013 session of the General Assembly was responsive by restoring a portion of previously lost funding for trial court technology upgrades. The bill also established a Judicial Technology Oversight Committee, now chaired by Justice Massa. The committee is comprised of members of all three branches, the private sector, and county clerks. We are very grateful for the leadership of Senate President Pro Tem David Long and House Speaker Brian Bosma, along with that of Representatives Greg Stuerwald, Kathy Richardson, Tim Brown, Steve Braun, Ed Delaney and Steve Stemler and Senators Luke Kenley, Brandt Hershman, John Broden, Karen Tallien and Lonnie Randolph, and we look forward to building on this spirit of cooperation in the years ahead. In the meantime, we have been working hard to provide the Odyssey Case Management System to more and more of the trial courts that seek it.

Odyssey has now been implemented in 175 courts in 48 counties and handles essentially 50% of all new cases. But to fully benefit from Odyssey, and other trial court case management systems, it is critical that information can be shared between courts. This data sharing is particularly important in criminal cases, family law, and juvenile matters, especially when it relates to some of our most vulnerable citizens—our children. Here's what can happen. Although a judge in county "A" that is not on the Odyssey system has access to all juvenile cases in their own county, that same judge does not have direct access to any other juvenile cases outside county "A." This means the judge may lack needed information because there may be a Child in Need of Services (a "CHINS" case) or a delinquency case filed in another county.

An enactment last legislative session directed the Division of State Court Administration to work to fill this void and to develop the technology to "send and receive" court data between Odyssey and another case management system by the end of 2013. This goal has been attained. Working together with the "Quest" system, a case management system used by some of the larger counties to manage their juvenile cases, we have now implemented the exchange of data between Odyssey and Quest. And for the courts not on Odyssey or Quest, we have developed and are making available a separate application that searches both case management systems.

In another collaborative effort, last year you created the Commission on Improving the Status of Children in Indiana. This 18-member Commission includes leadership from all three government branches that have the ability to impact the life of a child, and Justice Loretta Rush serves as its initial chair. The Commission identified priorities and established various task forces (including members from government and non-governmental stakeholders throughout the state), on specific issues such as infant and child mortality, parental substance abuse, child safety, juvenile justice, and foster care reform.

In last year's State of the Judiciary message, you heard about our concern for the unmet legal needs of economically-challenged Hoosiers. Two weeks ago, at the end of 2013, we did an Odyssey Case Management System data "snapshot" of pending civil lawsuits, and the results were pretty shocking. Considering all civil cases, 63% of the parties were not represented by counsel. In family law cases alone, 60% of the litigants did not have a lawyer!

When people are in court without a lawyer, bad things happen. It places unrepresented litigants under a great disadvantage and is almost always detrimental to their interests; it deprives judges from receiving all the information they need to make just and fair judicial rulings; and it clogs court dockets and delays justice for all court users.

To meet this challenge, Indiana lawyers are stepping up to the plate to provide even more volunteer legal services (called "pro-bono" service). And the Indiana State Bar Association has recommended the mandatory annual reporting of voluntary pro bono work. We are working to have such a program in place in the coming months. Our shared objective is to significantly reduce the number of people in court without a lawyer, enhancing Indiana's judicial system's efforts to provide greater justice, fairness, and efficiency.

On another front, many of you already know about how the Indiana Risk Assessment Tool is now being used to help our courts and the Department of Corrections to apply individualized strategies for offender rehabilitation. In fact, the National Institute of Corrections reported on its website in September that "Anyone looking for an example of a great risk assessment system and or risk assessment instruments needs to look at [the Indiana Risk Assessment System]."

Such risk assessment tools, based on the scientific principles of "evidence-based practices," are also a key element of the Court's new initiative to explore, develop, and if possible, to implement significant improvements in the way Indiana judges make determinations about the pre-trial release of citizens charged with non-violent offenses. The Supreme Court, which has the constitutional responsibility to "supervise the exercise of jurisdiction of Indiana's courts," has established a special task force of trial judges, probation officers, and representatives of prosecutors and criminal defense attorneys to help the Court adopt the procedures to make this happen in Indiana. We want to empower judges with solid tools to make the process more fair and equitable, to enhance public safety, to assure that people will appear for their scheduled trials, and to reduce reliance on expensive jail beds.

There are some items for your radar screen. These are items the Supreme Court cannot accomplish without your thoughtful assistance:

1. **Bringing the Judgment Docket****, an ancient but statutory court record, into the digital age. The Court has had a special ad hoc committee, part of our Records Management Committee, working with various stakeholders, including county clerks and others, in an effort to modernize this relic of the quill pen era. We need your help.
2. **Fixing the Marion County Township Small Claims Courts**. Our present system has been the subject of ridicule by the *Wall Street Journal*, and local newspaper and television reporters launched investigations into the system. A task force co-chaired by Court of Appeals Judge John Baker and Senior Judge Betty Barteau held hearings and made a comprehensive report recommending changes urgently needed. Local leadership and changes in court rules, however, can only scratch the surface. Systemic change is imperative, and this requires legislative action.
3. **Looking further into the future**, and considering the simultaneous demands and constraints on county property tax revenue, as well as effective and responsible judicial administration, we encourage you to consider shifting more and more funding of the judicial branch expenses from local government to state funding. For many reasons, this is wise and sound public policy, and it is used effectively in many other states.

As we look to the year just completed and the year ahead, we also want to commit the Indiana judiciary to doing everything we can to help implement your masterful achievement last year in revising Indiana's Criminal Code. This was a truly amazing feat by all involved, and particularly the steadfast legislative leadership of the Criminal Code Evaluation Commission chaired by Rep. Steuerwald and, before him, Rep. Ralph Foley, Rep. Matt Pierce, and Sen. Richard Bray. A product of multiple years of thoughtful efforts and difficult negotiations, the result was an outstanding piece of legislation. We understand that some modifications may be considered this session, but we stress the importance of retaining maximum judicial discretion in criminal sentencing. Individualized sentences reflect the enormous variations among offenders and the crimes they commit. Judicial discretion is essential to maximize public protection, offender rehabilitation, and responsible stewardship of incarceration costs. The courts stand with you to help implement and fulfill your admirable objectives in this bill.

This summary of highlights and aspirations constitutes this year's State of the Judiciary message. Looking forward to what the Judicial Branch, the General Assembly, and the Executive Branch can accomplish together in the coming year, this concludes our 2014 report on "the condition of the courts." Thank you.

* During the speech, Chief Justice Dickson reported "nearly an 11% decrease in new cases for the Court of Appeals." The text above has been updated.

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